



Texas Department of Insurance
Division of Workers' Compensation
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1609

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

PART I: GENERAL INFORMATION

Requestor Name and Address: TOMBALL REGIONAL HOSPITAL PO BOX 889 TOMBALL TX 77377-0889	MFDR Tracking #: M4-06-0980-01
	DWC Claim #:
	Injured Employee:
Respondent Name and Carrier's Austin Representative Box #: HARTFORD UNDERWRITERS INSURANCE CO. Box #: 47	Date of Injury:
	Employer Name:
	Insurance Carrier #:

PART II: REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "...we are a hospital and reimbursement should be calculated under the Hospital Outpatient Prospective Payment System, (HOPPS)... A statement of Reasonable & Customary is enclosed to support the position that our billing is 'reasonable & customary' and that our charges are considerably less than our competitors."

Requestor's rational for increased reimbursement from the *Table of Disputed Services*: Ingenix recommendation to the Dept of Wrkrs' Comp., then the Commission in Nov. 2002 to develop MAR's for a hospital out-patient fee guideline that Market reimbursement of 140% of Medicare's Hospital Outpatient Prospective Pmt System (HOPPS) shall meet the statutory requirements of Section 413.011(d). Revenue code 278 is reimbursable at 110%.

Amount in Dispute: \$524.99

PART III: RESPONDENT'S POSITION SUMMARY

The respondent did not submit a response for consideration in this dispute.

PART IV: SUMMARY OF FINDINGS

Date(s) of Service	Denial Code(s)	Disputed Service	Amount in Dispute	Amount Due
3/30/2005	W10, M, N	Outpatient Surgery	\$524.99	\$0.00
			Total Due:	\$0.00

PART V: REVIEW OF SUMMARY, METHODOLOGY AND EXPLANATION

Texas Labor Code §413.011(a-d), titled *Reimbursement Policies and Guidelines*, and Division rule at 28 Texas Administrative Code §134.1, titled *Use of the Fee Guidelines*, effective May 16, 2002 set out the reimbursement guidelines.

This request for medical fee dispute resolution was received by the Division on September 30, 2005. Pursuant to Division rule at 28 TAC §133.307(g)(3), effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, the Division notified the requestor on October 10, 2005 to send additional documentation relevant to the fee dispute as set forth in the rule.

- For the services involved in this dispute, the respondent reduced or denied payment with reason code:
 - W10 – NO MAXIMUM ALLOWABLE DEFINED BY FEE GUIDELINE. REDUCED TO FAIR AND REASONABLE.
 - M – IN TEXAS, OUTPATIENT SERVICES ARE TO BE PAID AS FAIR AND REASONABLE.
 - N – IN ORDER TO REVIEW THIS CHARGE WE NEED A COPY OF THE INVOICE DETAILING COST TO THE PROVIDER.
- This dispute relates to outpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 TAC §134.1, effective May 16, 2002, 27 TexReg 4047, which requires that "Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers' Compensation Act, §413.011 until such period that specific fee guidelines are established by the commission."

3. Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.
4. Division rule at 28 TAC §133.307(g)(3)(D), effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to provide "documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement." Review of the submitted documentation finds that:
 - The requestor's position statement asserts that "A statement of Reasonable & Customary is enclosed to support the position that our billing is 'reasonable & customary' and that our charges are considerably less than our competitors."
 - Review of the submitted documentation finds a *STATEMENT OF REASONABLE AND CUSTOMARY CHARGES* which states "Tomball Regional Hospital uses an outside firm, Cleverley & Associates to perform a complete market study for accurate benchmarking data for rate comparisons with our closest (6) competitors... Results of the market study found our charges are considerably less than our competitors. Our focus is to keep Tomball's charges slightly lower than the average of our competitors, therefore, our charges are not above reasonable & customary."
 - The requestor did not provide a copy of the above referenced market study for review in this dispute.
 - The Division has previously found that a reimbursement methodology based upon payment of a hospital's billed charges, or a percentage of billed charges, does not produce an acceptable payment amount. This methodology was considered and rejected by the Division in the *Acute Care Inpatient Hospital Fee Guideline* adoption preamble which states at 22 Texas Register 6276 (July 4, 1997) that:

"A discount from billed charges was another method of reimbursement which was considered. Again, this method was found unacceptable because it leaves the ultimate reimbursement in the control of the hospital, thus defeating the statutory objective of effective cost control and the statutory standard not to pay more than for similar treatment of an injured individual of an equivalent standard of living. It also provides no incentive to contain medical costs, would be administratively burdensome for the Commission and system participants, and would require additional Commission resources."

Therefore, a reimbursement amount that is calculated based upon a hospital's billed charges cannot be favorably considered when no other data or documentation was submitted to support that the payment amount being sought is a fair and reasonable reimbursement for the services in dispute.
 - The requestor's position statement further asserts that "...we are a hospital and reimbursement should be calculated under the Hospital Outpatient Prospective Payment System, (HOPPS)."
 - While the Division has previously found that Medicare patients are of an equivalent standard of living to workers' compensation patients, (22 TexReg 6284, July 4, 1997), Texas Labor Code Section 413.011(b) requires that "In determining the appropriate fees, the commissioner shall also develop one or more conversion factors or other payment adjustment factors taking into account economic indicators in health care and the requirements of Subsection (d)... This section does not adopt the Medicare fee schedule, and the commissioner may not adopt conversion factors or other payment adjustment factors based solely on those factors as developed by the federal Centers for Medicare and Medicaid Services." Therefore, a reimbursement amount that is calculated based solely on the Medicare fee schedule or on conversion factors or other payment adjustment factors developed by the federal Centers for Medicare and Medicaid Services cannot be favorably considered when no other data or documentation was submitted to support that the amount sought is a fair and reasonable reimbursement for the services in dispute.
 - The requestor's rationale for increased reimbursement from the *Table of Disputed Services* asserts that "Ingenix recommendation to the Dept of Wrkrs' Comp., then the Commission in Nov. 2002 to develop MAR's for a hospital out-patient fee guideline that Market reimbursement of 140% of Medicare's Hospital Outpatient Prospective Pmt System (HOPPS) shall meet the statutory requirements of Section 413.011(d). Revenue code 278 is reimbursable at 110%."
 - The requestor did not submit a copy of the Ingenix recommendation for consideration in this review.
 - The requestor did not submit documentation to support that market reimbursement of 140% of Medicare's Hospital Outpatient Prospective Payment System would provide a fair and reasonable reimbursement for the services in this dispute during the time period the services were rendered.
 - The requestor did not submit documentation to support the Medicare calculation for the services in dispute.
 - The requestor did not discuss or explain how revenue code 278 is reimbursable at 110%.
 - The Division notes that Division rule at 28 TAC §134.401(c)(4)(A)(i) is not applicable to the services in dispute and that per §134.401(a)(4) "Ambulatory/outpatient surgical care is not covered by this guideline and shall be reimbursed at a fair and reasonable rate until the issuance of a fee guideline addressing these specific types of reimbursements." Therefore, reimbursement of revenue code 278 at 110% cannot be favorably considered when no other data or documentation was submitted to support that the amount sought is a fair and reasonable

reimbursement for the item in dispute.

- The requestor did not submit documentation to support that the payment amount being sought is a fair and reasonable rate of reimbursement for the services in dispute.
- The requestor did not discuss or explain how payment of the requested amount would satisfy the requirements of Division rule at 28 TAC §134.1.

The request for additional reimbursement is not supported. Thorough review of the documentation submitted by the requestor finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

5. The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division concludes that this dispute was not filed in the form and manner prescribed under Division rule at 28 Texas Administrative Code §133.307(g)(3)(D). The Division further concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

PART VI: GENERAL PAYMENT POLICIES/REFERENCES

Texas Labor Code §413.011(a-d), §413.031 and §413.0311
28 Texas Administrative Code §133.307, §134.1, §134.401
Texas Government Code, Chapter 2001, Subchapter G

PART VII: DIVISION DECISION

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is not entitled to additional reimbursement for the services involved in this dispute.

DECISION:

_____ Authorized Signature	Grayson Richardson _____ Medical Fee Dispute Resolution Officer	8/22/2011 _____ Date
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PART VIII: YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **20** (twenty) days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with other required information specified in Division rule at 28 TAC §148.3(c).

Under Texas Labor Code §413.0311, your appeal will be handled by a Division hearing under Title 28 Texas Administrative Code Chapter 142 Rules if the total amount sought does not exceed \$2,000. If the total amount sought exceeds \$2,000, a hearing will be conducted by the State Office of Administrative Hearings under Texas Labor Code §413.031.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.